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TO: Jim Flyock
FROM: Anne Spafford
RE: Daynard Press Conference

DATE March 27, 1988

You have asked me for a transcript of my notes taken at the Daynard press conference on Saturday, March 26, 1988. I have therefore had my notes transcribed in point form. You will find, I am certain, that they are rather cryptic. Nevertheless, I hope that they will fulfill your purpose.

The press conference began at approximately 1:00 at which time the following people were introduced to us:

- Miles Lord of Minnesota, formally Federal District Court Judge. He was involved in obtaining the discovery of documents in Dalkon Shield cases. He is a plaintiffs' attorney in tobacco cases in West Virginia.
- Paul Monzzone. He is co-counsel with Marvin Belli in tobacco cases.
- Allen Darnel. He worked in getting the documents in the Cipollone case.
- Richard Daynard
- Don Davis. Lead attorney in Hornton case.
- Bill Townsley of Beaumont, Texas. He is presently involved in tobacco cases in Texas.

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- George Kilbourn of Martinez, California. He is involved in asbestos-tobacco synergy suits.

Mr. Daynard began the press conference by stating that exhibits and excerpts of deposition testimony taken in the Cipollone case were being presented. The goal of the press conference was to make these documents available. These documents will be useful in all essential claims made in tobacco cases which are pending.

Kinds of documents:

1. Evidence that the tobacco companies knew that smoking caused lung cancer, that they knew of dangers and the addictive element contained in cigarettes (nicotine) although they now deny all of this.

2. Evidence that demonstrates that the companies knew how to make a non-carcinogenic cigarette .

They knew how to make the cigarette since the early 1970's. They did not make these cigarettes because of the possible exposure to liability for their other cigarettes and because that would result in a decrease in sales of other cigarettes.

People wouldn't be dying if the tobacco companies had made this cigarette instead of opting for financial benefits.

3. The tobacco companies created an elaborate smoke screen regarding their research. The companies have been saying that tobacco cases have not been proven.

This was not good faith research for the real reason for the research was strictly for public relations purposes.

4. The tobacco companies were involved in an active conspiracy to hide information regarding cigarettes. The documents in this group were selected from a larger group.

- 1946 letter concerning evidence that cigarettes causes lung cancer.
- Deposition testimony of James Mold, formerly of Liggett & Meyers. The deposition relates that his job at Liggett was solely to research these issues. In the late 1950's or early 1960's he concluded that cigarettes cause cancer. This knowledge should be imputed into the tobacco companies.
- 1956 memo regarding the cardiovascular effect of cigarettes.
- Document 1.7 Memo from Research Director Philip Morris on lung cancer.
- Ernest Wynder had been making live tests on the effect of tar on mice.
- 1961 research stating that cigarettes are carcinogenic, tumor promoting.
- It was the tobacco companies position that all of this scientific evidence was not enough to prove that cigarettes cause lung cancer.
- 1985 reports of Arthur D. Little Company about tar

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- research made with Liggett & Meyers products. The report said that the test made with tar mice proved that tar caused cancer. The report found that cigarettes contained biological active ingredients, that they caused cancer and were cancer promoting.
- Research made on behalf of Philip Morris indicating that cigarettes were addictive. 1972 memo by the senior research analyst saying that without nicotine there would be no smoking.

On the development of the non-carcinogenic cigarettes, Mr. Daynard commented on a number of documents which had been produced. He stated that a patent on the cigarette had been obtained in 1975. The tests made with this new cigarette indicated that when mice were painted with tar, 36 out of the 50 mice tested had developed tumors whereas only one of the 50 mice painted with the new product developed a tumor. The one tumor on that mouse eventually went away.

On issue of research, Mr. Daynard commented on the following documents:

- Tests which had been made on Chesterfield cigarettes indicated that there were no problems with the throat or accessory organs and that it did not cause cancer. These tests had been promoted as scientific proof.
- Documents 3.8 and 3.9 indicate that the AMA was

- considering opposing labeling requirements of the FTC. The tobacco industry was paying a substantial amount of money to fund research by the AMA.
- 1971 memo from the Tobacco Institute indicates that the AMA research conducted on behalf of the tobacco industry had become an embarrassment to the AMA but that the AMA needed the support of the tobacco industry.

On the issue of the tobacco industry's effort to suppress the disclosure of information to the public, Mr. Daynard made the following comments:

- A confidential 1974 memo indicates that the tobacco companies had arranged the cancellation of a press conference to be given by P. Hamburger who had been conducting research for the CTR. The press conference was to state that cigarettes caused cancer. Hamburger had been conducting inhalation tests and wanted to publicize his results. He was ushered out of the press conference room.

During the question period at the press conference the following comments were made:

The first question asked related to whether these documents would be useful to other plaintiffs. It was asked if these documents were public records.

Mr. Daynard replied by saying that anybody could apply

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to the court where the case is pending and obtain the documents under a protective order. He also said that the tobacco companies had been unsuccessful with their plea to the Supreme Court of the United States in withholding the disclosure of these documents. He also stated that this was the first press conference where these documents were discussed publicly and that they should be in the public domain "This is an important day in the history of this litigation."

The next question dealt with why the Surgeon General was so late in coming up with labels for cigarette packages. Mr. Daynard replied that in 1955 the Arthur D. Little had been duplicated and because of the results, the industry continued to say that the issue was still controversial.

Mr. Daynard stated that in 1953 the Surgeon General was finally given access to the results of experiments made on cigarettes. The access to these documents was strictly on a confidential basis. Mr. Daynard then referred to the company of Hill & Nolton which is a Public Relations company which was involved with this issue since the beginning. The public relation strategy was to confuse the public. Over 2 billion dollars a year is being spent on advertisements.

It was then asked why the Surgeon General did not commission his own report.

1962.- report to the Surgeon General establishing a causal relationship

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1957 - official report of the Surgeon General

1953 - the Windergram studies

The tobacco industry made no studies, no research of its own.

Mr. Daynard then concluded that the tobacco companies had a duty to explore, test, and research the product as well as warn consumers.

The next question dealt with why the cigarette companies had not marketed the safer cigarette earlier. In response to this question, Mr. Daynard indicated that there had been a conscious decision by the tobacco companies. The companies did not put it on the market because it would implicate that other cigarettes are dangerous.

Comments by Miles Lord: "Warnings on the labels were put by the tobacco industry."

Mr. Daynard then proceeded to state that these documents would support 1966 causes of action based on alternative design claims. The tobacco industry had an obligation to market these cigarettes. This evidence would also support an argument for conspiracy after 1966 to keep this information from the public.

Mr. Davis stated that the Tobacco Institute had provided the Surgeon General advisory committee with over a thousand results of tests linking cancer with cigarettes. He also indicated that these tests had been redone. He stated that the industry had decided to ignore the Surgeon General studies. He

also referred to the AMA studies.

Next, Mr. Daynard then stated that the expert testimony in the Cipollone case revealed that in the late 1930's or early 40's there was enough scientific information at that time for the industry to test its product. He said that the industry had an obligation at that time to put warnings on its product that the cigarette could cause cancer. He stated that these warnings should have been altered with time to eventually read that cigarettes do cause cancer.

Mr. Davis stated that he would be using these documents at the retrial of the Hornton case.

Mr. Daynard also indicated that reports were sent to the advisory committee of the Surgeon General in 1980 which indicate that the industry knew at that time that they could make safer cigarettes. There was an obligation on the part of the manufacturers to sell a safer cigarette.

Mr. Kilbourn then stated that this evidence was very similar to that obtained to that in the asbestos case.

Mr. Townsley stated that these documents should disclose that there was a breach of good faith by the entire industry. These documents should be sufficient to instigate a congressional investigation into the tobacco industry.

Mr. Townsley also stated that 1953 was a pivotal year. In 1953 the New England Medical Journal published an article which, for all intents and purposes, stated that cigarettes cause

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cancer. He stated that the tobacco industry did not comply with their duty, that they should have objectively analyzed the evidence and disclosed the results to the public. Instead they opted to protect their own product.

Mr. Townsley said that had the industry complied with its legal obligations, the decrease in cigarette smoking which started in the 1980's would have happened in the 1960's instead. The bad faith demonstrated by the tobacco industry has resulted in billions of dollars of profits for the industry. He stated that the tobacco companies were "acting with impunity". He summarized by saying that there was now sufficient documentation to call on Congress to convene an investigation into the tobacco industry.

Next, Mr. Darnel stated that in 1954 a "Statement to Cigarette Smokers" had been published in all major newspapers. This advertisement gave the impression that the tobacco companies were conducting "real research". What they were in fact doing was a "sham". This was worse than doing nothing.

Miles Lord agreed with Mr. Townsley's suggestion that a congressional investigation was warranted in this case. He said that they should get masters of the court to enter into the tobacco industry and strip them and get the product off the market. He also stated that in his opinion, the tobacco companies were in violation of Rule 11 of the Federal Courts and that they were also in contempt of court. As support for this,

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he stated that the tobacco companies had possession of these documents and yet had failed to produce them. He suggested that because of this, plaintiff lawyers should be able to get their costs as sanctions for these breaches.

Mr. Daynard also stated that he has recently testified before a Massachusetts Committee which was proposing to promulgate a bill. This bill proposes to render liable any person who sells products which he knows to be dangerous.

Mr. Townsley then indicated that he would be willing to cooperate with any congressional investigation. He said that he had documents and that he would give them to any attorney, subject to the protective order. However, he claims that these documents should be public documents.

Mr. Daynard then stated that 1950 advertisements were published by the tobacco industry promising health protection for smokers. The tobacco companies at that time were saying that there was no harm to the throat or accessory organs. He stated that the deception was still going on now, except that it was now more subtle. The present slogan of the tobacco companies is to promote their product under the themes of purity and filters and by associating it with vigorous activity.

There was then some discussion as to whether the retailer or distributor of cigarettes should also be liable for any damages. Mr. Manzzione then indicated that in any tobacco suit that he would be handling, he would bring in the retailer or

distributor. Mr Daynard then interjected by saying that the tobacco companies have been outrageously at fault for allowing their product to be sold to minors.

Mr. Darnel then stated that the tobacco companies' main strategy in tobacco cases was to blame consumers. This strategy will no longer work because of the disclosure of these documents.

Mr. Darnel also stated that in 1958, the New York Times published an article about European tobacco companies which were then considering the effect of cigarettes. He then stated that regardless of the jury verdict which would be rendered in the Cipollone case, this case was already a victory because of the disclosure of the documents. He also stated that it was the tobacco companies' fault that people were sick.